***THE HON'BLE SRI JUSTICE J. CHELAMESWAR**

AND

THE HON'BLE SRI JUSTICE GODA RAGHURAM

+ WRIT PETITION NO. 7435 OF 2004

% THURSDAY, THE SEVENTH DAY OF APRIL,

TWO THOUSAND FIVE

D. Ramesh Babu s/o Venkataiah,

aged about 40years, Occ: Town Planning

Officer (Ord.Gr.), Bellampally, Adilabad District

Petitioner

Versus

$ The Principal Secretary to Government,

Municipal administration & Urban Development

Department and others.

Respondents

! Counsel for the petitioner : Sri Nooty Rama Mohana Rao, Advocate

^ Counsel for the respondents: Government Pleaders for Services-I and for Municipal Administration,

Sri J.R. Manohar Rao, Standing Counsel for APPSC,

Sri D.Linga Rao, Advocate

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>Head Note:

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 7435 of 2004

Between:

D. Ramesh Babu, S/o Venkataiah,

Aged about 40 years, Occ: Town Planning

Officer (Ord.Gr.), Bellampally, Adilabad District.

..... PETITIONER

AND

1. The Principal Secretary to Government,

Municipal Administration & Urban Development Department,

Secretariat, Hyderabad.

2. The Director of Town and Country Planning Department,

Andhra Pradesh, Hyderabad.

3. The Secretary, A.P. Public Service Commission,

Andhra Pradesh, Hyderabad.

4. K.Sharada, W/o Kesava Rao aged about 35 years,

R/o H.No.8-3-231/8, Women's Cooperative Housing

Society, Road No.2, Jubilee Hills, Hyderabad – 45.

5. V.L.N. Subrahmanyam, s/o V.Upendra Rao,

aged about 28 years, Near Anand Talkies, Secunderabad.

6. Navneeth Reddy S/o Jagannadha Reddy,

aged about 33 years, B-22, Ravindra Nagar,

Habsiguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari and to call for records relating to and connected with order of AP Administrative Tribunal rendered in V.M.A. No. 935, 943 and 905 of 2003 in O.A. No. 7237 of 2003 dated 06-04-2004 and to quash or set aside the same by holding that the orders of the Government contained in G.O.Ms.No. 450, Municipal Administration & Urban Development (B2) Department. Dated 01-10-2003 are legal and valid with all consequential benefits.

For the Petitioner: Mr. Nooty Rama Mohana Rao, Advocate

For the Respondent No.1: Government Pleader for Services-I

For the Respondent No.2: Government Pleader for Municipal Administration,

For the Respondent No.3: Mr. J.R.Manohar Rao, Standing Counsel for APPSC

For the Respondent No.4: None appeared

For the Respondents No.5&6: Mr. D.Linga Rao, Advocate

The Court Made the Following :

::ORDER::

(Per Hon'ble Sri Justice Goda Raghuram)

By a common order dated 06-04-2004, the Andhra Pradesh Administrative Tribunal (the Tribunal) dismissed three(3) vacate miscellaneous applications (VMA) Nos.935, 943 and 905 of 2003 in OA No. 7237 of 2003. VMA No.935 was filed by the 1st and 2nd respondents herein; VMA 943 was filed by one Sri M.Narasimha Ramulu, Town Planning Officer (Ordinary Grade) of Gaddiannaram and VMA 905 of 2003 was filed by the writ petitioner.

O.A.7237 of 2003 was initially filed by the respondent Nos.4 to 6 herein and five others, aggrieved by the orders of the Government in G.O.Ms.No.485, dated 01-11-2002 and G.O.Ms.No.450, MA&UD, dated 01-10-2003. On 07-11-2003 the Tribunal granted an interim order directing the official respondents not to take further action pursuant to the two impugned G.Os. On 10-11-2003 the interim order initially granted was modified, directing the official respondents to maintain *status quo* as on 07-11-2003 recruiting the three Town Planning Officers mentioned in G.O.Ms.No.450, dated 01-11-2003 and in addition Sri K.Purushottam Reddy whose name figures in G.O.Ms.No.485, dated 01-11-2002. Seeking vacation of the modified interim orders, the several persons filed the V.M.As.

Though initially eight (8) applicants filed the O.A, five (5) of them excluding the respondent Nos.6 to 8 herein, withdrew from the litigation and thus only the respondent Nos.4 to 6 herein continued the challenge in the Tribunal. The claim of the applicants (Respondent Nos.4 to 6) is that though they are fully eligible and qualified for being appointed as Assistant Directors of Town Planning (by direct recruitment) under the Rules issued in G.O.Ms.No.197, MA&UD, dated 25-03-1992 (Special Rules), the State Government by the impugned G.Os is resorting to fill up the existing direct recruitment vacancies by in-service candidates and otherwise than by direct recruitment.

The writ petitioner and the others, who filed the VMAs sought vacation of the

modified interim orders issued by the Tribunal on 10-11-2003, contending that the impugned orders were issued by the Government as 15 vacancies of Assistant Directors meant to be filled by direct recruitment could not be so filled up and keeping those posts vacant was not in public interest. Since direct recruitment would take considerable time, the Government had after obtaining the concurrence from the Andhra Pradesh Public Service Commission, issued the impugned orders of relaxation of the relevant Rules in accordance with the power available to the Government under Rule 31 of the A.P. State and Subordinate Service Rules (General Rules) and therefore, the impugned orders suffer from no infirmity.

In rejecting the VMAs including the one filed by the writ petitioner, the Tribunal held that as the existing vacancies in the posts of Assistant Director, Town Planning were earmarked for direct recruitment as per the special Rules, they ought to have been filled up by the said method and not otherwise. Further the party respondents in the O.A except one Sri R.Purushottam Reddy, are not Special Grade Town Planning Officers and the posts held by them are not feeder categories to the posts of Assistant Directors. Further, held the Tribunal, another O.A.428 of 1996 filed by persons similarly situated as the applicants in O.A.No.7237 of 2003 was disposed of by the Tribunal on 28-04-2003 directing the official respondents to identify the vacancies of Assistant Directors required to be filled by direct recruitment within two months from the date of receipt of a copy of order and directing the Andhra Pradesh Public Service Commission to fill up such posts by direct recruitment. A further direction was issued in the said O.A, to the Director of Town and Country Planning (2nd respondent herein) to prepare a final seniority list indicating how many posts have to be filled up by a direct recruitment and how many by the other methods of recruitment under the Special Rules and that till then no promotions to the category of Assistant Directors should be made. The Tribunal also held that no material was placed before it to demonstrate that the directions in O.A.No.428 of 1996 (supra), were complied with by the official respondents before issuing the impugned orders in the O.A.

Aggrieved by the above order of the Tribunal, this writ petition is filed.

The petitioner joined service as a Town Planning Building Overseer on 30-09-1985, was promoted as a Town Planning Supervisor, assumed office of the said post on 08-03-1987 and was further promoted as Town Planning Officer and joined duty

therein with effect from 06-06-2001. It would appear that the petitioner and two other Town Planning Officers (Ordinary Grade), Sri N.Narasimha Ramulu and Sri A.Prabhakara Rao represented to the State Government seeking appointment as Assistant Directors of Town Planning in the vacancies meant for direct recruitment. They pleaded that they had put in long service in the department, are post graduates in Town Planning, and that as there were direct recruitment vacancies existing in the Department, they should be considered for appointment in such vacancies. The 2nd respondent by his communication dated 08-10-2002 informed the State Government that as in the Special Rules, the direct recruitment quota for Assistant Directors of Town Planning is only 30%, in a cycle of 9 vacancies only 3 vacancies are available for direct recruitment. In a further letter dated 19-10-2002 the 2nd respondent informed the State Government that 15 vacancies in the posts of Assistant Directors earmarked for direct recruitments are available. The State Government in a letter dated 31-05-2003 addressed the APPSC-3rd respondent to respond to the request of the writ petitioner and other Town Planning Officers (Ordinary Grade). In response thereto the 3rd respondent by its letter dated 07-08-2003 informed the 1st respondent that as 15 direct recruitment vacancies of Assistant Directors remain unfilled and there is no hope that these would be filled in the near future, to avoid dislocation of work, it agrees with the proposal of the Government (to appoint the writ petitioner and other representionists as Assistant Directors of Town Planning). Thereupon the 1st respondent in G.O.Ms.No.450, dated 01-10-2003 issued orders appointing the petitioner and two other Town Planning Officers (Ordinary Grade) against “O.C” vacancies under direct recruitment, in relaxation of the Special Rules and accorded permission to the 2nd respondent to appoint Sarvasri M.Narasimha Ramulu, D.Ramesh Babu (writ petitioner) and A.Prabhakar Rao, Town Planning Officers(Ordinary Grade) as Assistant Directors of Town Planning against “O.C” vacancies under direct recruitment quota, relaxing the special Rules, subject to the condition that these officials take last rank among the Assistant Directors of Town Planning working in the Department.

Earlier in G.O.Ms. No.485 MA&UD Department, dated 1.11.2002, the state Government issued orders for absorption of one Mr. K. Purushotham Reddy, Town Planning Officer (Special Grade) as Assistant Director of Town Planning/Town

Planning Officer Selection Grade against one of the vacancies earmarked for direct recruitment, in relaxation of the Special Rules.

Under the Special Rules (issued in G.O.ms.No.197 MA&UD Department dated 25.3.1992) the post of Assistant Director in the Town Planning Directorate and Town Planning officer (Selection Grade) of Selection Grade Municipalities are included in Category-4 of the constitution of the AP Town Planning Service. For posts in category-4 the methods of appointment are three fold: (1) by transfer from the category of Town Planning Assistants in the AP Town Planning Subordinate Service; (2) by direct recruitment from Special Grade Town Planning Officers belonging to the AP Municipal Town Planning Subordinate Service; and (3) by direct recruitment. The Note to Rule-3 of these Rules mandates that the vacancies in category-4 shall be filled up in the specified order of rotation in a unit of 9 vacancies. As specified in the note the 1st, 4th, 6th and 9th vacancies are earmarked for appointment by transfer (from the category of Town Planning Assistants); the 2nd, 5th, 8th vacancies are earmarked for direct recruitment; while the 3rd and 7th vacancies are earmarked for direct recruitment from the category of Special Grade Town Planning Officers. Rule 5 of these Rules applies the reservations to appointments made to category-4 by direct recruitment as also reservations in favour of women, as per Rule 22 of the General Rules.

As could be noticed from the provisions of the Special Rules, though appointment from the category of Special grade Town Planning Officers is also labeled as direct recruitment, it is in the nature of a limited direct recruitment, only from the specified feeder category and excluding from the open market. It is only the 2nd, 5th and 8th vacancies in a unit of 9 vacancies that are earmarked for normal direct recruitment and it is to this recruitment that the rule of reservation would apply.

During the hearing of this writ petition there was some argument urged on behalf of the official as well as unofficial respondents that the Government Orders impugned in the OA were issued in favour of Town Planning Officers to enable their appointment as Assistant Directors in those vacancies of Assistant Directors relatable to the other category of (limited) direct recruitment and not direct recruitment as meaning from the open market. These submissions are however without any basis whatsoever. In the counter affidavit filed by the State Government in OA No.7237 of 2003 it is clearly admitted “what is relaxed is only to a limited

extent of enhancing the direct recruitment by the second method and making appointments of qualified and competent Town Planning Officers." At another place in the counter affidavit it is stated "As there are two direct recruitment methods by way of exercising the power of relaxation under the general Rule-31 the Government validly diverted the posts from one method of direct recruitment to another method of direct recruitment." Even in the counter affidavit in this writ petition the State Government (the Principal Secretary to Government, MA&UD) candidly admits that by the impugned G.Os the direct recruitment vacancies, meant to be filled up by the normal direct recruitment method, have been filled up by absorbing Town Planning Officers. From the statistics provided by the Government as annexures to the counter affidavit in this writ petition, even the regular direct recruitment vacancies (in the category of Assistant Directors) that had arisen since December 1997 have not so far been filled up. In G.O.Ms. No.608 dated 25.10.1999 another order of relaxation appears to have been issued for absorbing one Laxmana Rao to a direct recruitment vacancy (2nd vacancy). Similarly K. Purushotham Reddy was absorbed in direct recruitment vacancy by G.O. Ms. No. 485, dated 1.11.2002 in the vacancy which occurred on 7.7.2000 and in G.O. Ms. No.450 dated 1.10.2003 two more Town Planning Officers – M.Narasimha Ramulu and D. Ramesh Babu (petitioner in this writ petition), were absorbed in direct recruitment vacancies. As per the statistics provided, since December 1997 no direct recruitment vacancy has been filled up, while the vacancies earmarked under the statutory rules for recruitment by transfer from the category of Town Planning Assistants and the limited direct recruitment from the category of Town Planning Officer Special Grade have all been filled up. Of the eight cycles (comprising units of 9 vacancies each) commencing from cycle-IV to cycle-XI, 24 vacancies of Assistant Directors that are required to be filled up by direct recruitment from the open market had arisen since December 1997 to April 2003. Not a single vacancy has been filled up by direct recruitment.

It is the case of the Government as per the information sheet (Annexure-I) appended to the counter affidavit, that 7 vacancies in three spells of 3, 2 and 2 vacancies each were notified to the APPSC by the State Government for direct recruitment in December 1998. These pertain to point Nos. 23 to 25, 27 to30. Point No.26 was diverted by absorption of one Laxmana Rao in GO Ms. No.608 dt 25.10.1999. Again point No.31 was notified on 19.12.2002 and points 32 to 34 also in December 2002, while points 35 to 37 were notified on 20.3.2003. Points 38 and 39 are stated to

have been notified in December 2002 while points 40 and 41 in July 2003. Point Nos. 44 to 46 have not even been notified to the APPSC. The fact of the mater however is that till date no direct recruitment to any of the 24 available vacancies has been made by the method of direct recruitment from the open market.

In the counter affidavit in this writ petition it is stated that proposals sent to the Finance Department have been cleared only in respect of 8 posts for direct recruitment and in respect of other vacancies the matter is under process. It is stated that commencing from cycle-IV the posts meant for direct recruitment through APPSC have not been filled up due to non-sanction by the Finance Department.

The counter affidavit while admitting that 25 vacancies in the post of Assistant Director of Town Planning under direct recruitment quota have not been filled up by direct recruitment except by the absorptions already referred to, states that direct recruitment could not be processed (to completion) due to administrative exigencies and therefore the relaxation power has been employed.

What administrative compulsions brought about the subversion of the recruitment discipline mandated by the statutory rules (that the composition of the category of Assistant Director of Town Planning should comprise 33 1/3% of normal direct recruitment) for 8 years now, since 1997, has not been spelt out. In the considered view of this court, this conduct of the State in ignoring the statutorily mandated normal direct recruitment process, whereby there is a wholesale violation of the balanced composition mandated under the Special Rules, constitutes a recidivist, compulsive and deliberate *ultra vires* conduct unmitigated by any demonstrated and compelling administrative or Governmental exigencies. That the Finance Department of the Government has not accorded approval is an inadequate fig leaf of an excuse to merit serious consideration. By this conduct the State Government has not only injured the statutorily identified standards of administrative excellence by the balanced composition of category-4, comprised of recruitment by transfer, limited direct recruitment and normal direct recruitment, but has also consistently subverted the constitutionally and legally protected interests of the Scheduled Castes, Scheduled Tribes, Backward Classes, Women and Physically Handicapped, without any established and compelling State interest offered as a justification for such wholesale violation.

Apart from the above, the contention on behalf of the State that the power to relax is

available under Rule 31 of the General Rules, requires critical scrutiny in the context of the provisions of Sec.4 of the AP (Regulation of Appointments to Public Service and Rationalization of Staff Pattern and Pay Structure) Act, 1994, which proscribes recruitment to any public service except from a panel of candidates selected and recommended by the APPSC where the post is within the purview of the said Commission and in accordance with the relevant rules governing recruitment. Apart from the fact that the provisions of this Act are entrenched by a *non obstante* provision in Sec.17 of it, being a legislation referable to Art. 309 of the Constitution and the appropriate legislative power of the State, the provisions of the Act would in any case perhaps override and overawe any inconsistent provision in rules made under the proviso to Art.309 of the Constitution including a rule granting a power of relaxation to the State. These areas await critical examination by the AP Administrative Tribunal at the hearing of the O.A.

It also requires to be noticed that the approach of the State Government to the exercise of the powers of relaxation of statutory rules has not been uniform either spatially or factually and is so inconsistent as to be apparently arbitrary, dependent on the subjective exigencies of irrelevant circumstances. We have noticed (in W.P.No. 11865/04) that for declining equal treatment to the petitioner (in the said writ petition) for appointment as a Forester on par with identically circumstanced Forest Guards, the State Government relied on the orders issued in G.O.Ms.No. 509 General Administration (AR.TI) Department, dt 31.12.1999, wherein it was stated that "the general approach would be not to give relaxation in individual cases but to amend the Act or Rule or the Guidelines in case of real hardship so that the benefit accrues to all and not to a few individuals who approach for such relaxation." This G.O. of 1999 which was projected as a hindrance for grant of the relaxation benefit to the petitioner in W.P. No.11865/04 does not appear to have come in the way for the exercise of power of relaxation in individual cases, when the Government issued G.O.Ms. No. 485 and 450 dt 1.11.2002 and 1.10.2003 respectively (impugned in OA No.7237/02).

Executive Governments under a constitutional order are not conferred powers for the personal gratification of successive State actors who occupy executive offices. The constitutional and legal grant of power is coupled with an obligation to act in harmony with the constitutional mandate of equality and with a view to subserve the

public interest not according to individual whim. Public power is not always a prerogative power. The power of relaxation is a species of public power to be exercised in public interest, rationally equitably and on legitimate classification parameters. It cannot be discriminatorily applied by irrelevant or shady choice or identification of persons for grant of the benefits of relaxation.

For all the above aforementioned reasons we find no grounds to interfere with the well considered order of the A.P. Administrative Tribunal dated 6.4.2004 impugned in this writ petition. The said order is impeccable and suffers no infirmity, warranting interference u/Art. 226 of the Constitution. The writ petition is devoid of merits and is consequently dismissed. No order as to costs.

Date:07.04.2005 ----------

LR COPY TO BE MARKED Justice J.Chelameswar

(BO)

Pvsn ----------

Justice G.Raghuram

….. Registrar

One fair copy to the Hon'ble Sri Justice J.Chelameswar, (for kind perusal)

One fair copy to the Hon'ble Sri Justice G.Raghuram, (for kind perusal)

To

1. The Principal Secretary to Government,

Municipal Administration & Urban Development Department,

Secretariat, Hyderabad.

2. The Director of Town and Country Planning Department,

Andhra Pradesh, Hyderabad.

3. The Secretary, A.P. Public Service Commission,

AP, Hyderabad.

4. The Registrar, AP Administrative Tribunal, Hyderabad.

5. Two CCs to the Government Pleader for Services-I, High Court Buildings, Hyderabad. (OUT)

6. Two CCs to the Government Pleader for Municipal Administration, High Court Buildings, Hyderabad. (OUT)

7. Sri J. R. Manohar Rao, Standing Counsel for the APPSC (OUT).

8. 8 LR Copies

9. The Under Secretary, Union of India, Ministry of LA & J & Company Affairs, New Delhi.

10. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad

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